

**PATENT**

Atty. Docket No. 35512-33

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/Joseph G. Swan/  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent of:

G. MICHAEL PHILLIPS, ET AL.

Serial No.: 09/615,021

Filed: July 13, 2000

For: SENSITIVITY/ELASTICITY-BASED  
ASSET EVALUATION AND  
SCREENING

Patent No.: 7,580,876

Issued: August 25, 2009

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT  
DETERMINATION UNDER 37 CFR § 1.322(A)(4)**

Applicants respectfully request reconsideration of the patent term extension that is indicated in the Decision mailed on April 21, 2010, for the above-referenced issued patent. This submission is being made within one month of the foregoing mailing date. The \$200.00 fee required under 37 CFR § 1.18(e) is being submitted herewith. This request is being made with reference to the following facts.

On February 10, 2010, Applicants filed a Request for Recalculation of Patent Term Adjustment in View of Wyeth (PTO/SB/131). In response, the USPTO issued the foregoing

Decision, increasing the patent term extension to 2,398 days. However, Applicants believe that the appropriate extension instead should be 2,637 days.

In *Wyeth and Elan Pharma v. Kappos*, the United States Court of Appeals for the Federal Circuit held that, rather than determining the total extension based on the longer of the two periods that would be available under § 154(b)(1)(A) and § 154(b)(1)(B), as the USPTO previously have been doing, the appropriate approach is to add the extensions under the two sections and then subtract out the portion where the two overlap, i.e., the delay under § 154(b)(1)(A) that occurs more than three years after the patent application was filed.

In the present case, the USPTO correctly indicates that the delay under § 154(b)(1)(A) from the filing date of the application to the first Office Action was 504 days. This entire delay occurred within the first three years after the patent application was filed, so there is no overlap with any of the delay under § 154(b)(1)(B). The delay under § 154(b)(1)(B), from three years after the filing date (July 13, 2003) to the issue date (August 25, 2009), is 2,235 days. Any other delays under § 154(b)(1)(A) or (C) would overlap the delay under § 154(b)(1)(B) and therefore can be disregarded. The USPTO indicates 102 days of Applicant delay. Accordingly, Applicants believe that the correct patent term extension should be:

$$504 + 2,235 - 102 = 2,637 \text{ days (i.e., 239 days more than is currently indicated).}$$

Based on the foregoing calculation, Applicants respectfully request adjustment of the patent term extension to a total of 2,637 days.

Other than the delays already taken into account by the USPTO, there were no circumstances constituting a failure by Applicants to engage in reasonable efforts to conclude processing or examination of the present application, as set forth in 37 CFR § 1.704. This patent is not subject to a terminal disclaimer.

If there are any fees due in connection with the filing of the currently submitted papers that have not been accounted for in this paper or the accompanying papers, please charge the fees to our Deposit Account No. 502490. If an extension of time under 37 C.F.R. § 1.136 is required for the filing of the currently submitted papers and is not accounted for in this paper or the accompanying papers, such an extension is requested and the fee (or any underpayment thereof) should also be charged to our Deposit Account.

Dated: May 4, 2010

Respectfully submitted,  
JOSEPH G. SWAN, P.C.

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